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TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

UICs: 401.06-00  
401.06-02  
408.03-00

SEP 15 2008

**LEGEND:**

Decedent A:

T; EP; RA.T3

Surviving Spouse B:

Taxpayer C:

Date 1:

Date 2:

Date 3:

Section:

State U:

IRA X:

Plan Y:

Company A:

Company B:

Company C:

Court T:

Amount 1:

Amount 2:

Dear

This is in response to the request for letter rulings submitted on your behalf by your authorized representative. In pertinent part, the ruling request seeks rulings under sections 408(d) and 401(a)(9) of the Internal Revenue Code ("Code"). The following facts and representations support your ruling request.

**FACTS:**

Decedent A, a resident of State U, died on Date 1, 2006, at age 75 having attained his "required beginning date" as that term is defined in Code section 401(a)(9)(C).

Decedent A was survived by his wife, Surviving Spouse B, and three (3) children including Taxpayer C. Surviving Spouse B and all of Decedent A's children, including Taxpayer C, his son, were alive as of the date of this ruling request.

Decedent A died testate. Article Second of Decedent A's Last Will and Testament provided that Surviving Spouse B was to receive all of Decedent A's estate if she survived him. Article Second further provided that, if Surviving Spouse B did not survive Decedent A, his estate was to pass in equal shares to his children who survived him and to the then living issue of each of his children who predeceased him..

Article Fifth of Decedent A's Last Will and Testament named Surviving Spouse B as the executor of his estate.

Article Seventh of Decedent A's Will provides that any beneficiary, whether entitled originally or as a result of a disclaimer, may disclaim any part or all of any gift or gifts to him or her. Any interest disclaimed shall be disposed of as if the beneficiary thereof had predeceased Decedent A.

Decedent A's Last Will and Testament was duly admitted to probate in Court T on Date 2, 2006, and Surviving Spouse B was appointed executrix of his estate.

As of his date of death, Decedent A was the owner of IRA X maintained with Company A. As of Date 1, 2006, IRA X had a value of Amount 1.

As of his date of death, Decedent A had an account in Plan Y sponsored by Company B and administered by Company C. As of Date 1, 2006, Decedent A's Plan Y account had a value of Amount 2.

Decedent A named Surviving Spouse B as the beneficiary of his IRA X. He did not name either a contingent or successor beneficiary of his IRA X. However, the terms of IRA X provided that, if Surviving Spouse B had predeceased Decedent A, Decedent A's estate would be the beneficiary thereof.

On Date 3, 2007, Surviving Spouse B provided written disclaimers to both Company A and to herself, as executrix of Decedent A's estate, disclaiming her interest in IRA X both as named beneficiary thereof and as primary beneficiary under Article Second of his

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Last Will and Testament. Said disclaimer was received by Company A which, pursuant to the disclaimer, treated Decedent A's estate as the beneficiary of IRA X.

Section of the Statutes and Session Law of State U provides, in relevant part, that If the deceased owner has not provided for another disposition in the event of a disclaimer, the interest disclaimed shall devolve as if the disclaimant has predeceased the deceased owner.

As sole executrix of Decedent A's estate, Surviving Spouse B proposes to transfer, by means of a trustee-to-trustee transfer, Taxpayer C's 1/3 interest in Decedent A's IRA X into another IRA set up in the name of Decedent A (Deceased) for the benefit of (f/b/o) Taxpayer C, beneficiary thereof.

It has been represented that minimum distributions intended to meet the requirements of Code section 401(a)(9) will be taken from the IRA (or IRAs) referenced above based on the remaining life expectancy of Decedent A. It has also been represented that distributions from the IRA (or IRAs) set up to benefit Taxpayer C will be taken without regard to any IRAs set up to benefit Decedent A's other two children.

**RULINGS REQUESTED:**

Based on above facts and representations, you, through your authorized representative, request the following letter rulings:

1. That the disclaimers referenced herein are qualified within the meaning of section 2518 of the Code;
2. That Taxpayer C's 1/3 interest in Decedent A's IRA X may be segregated and held in a separate inherited sub-IRA set up and maintained in the name of Decedent A (Deceased) for the benefit of Taxpayer C for purposes of determining Taxpayer C's minimum required distributions under Code section 401(a)(9) which applies to IRAs pursuant to Code section 408(a)(6);
3. That Taxpayer C's inherited sub-IRA, created by means of a trustee-to-trustee transfer of Taxpayer C's portion of Decedent A's IRA X into said sub-IRA may be titled as reflected in the second (2<sup>nd</sup>) ruling request, and, as a result, will comply with the requirements of Code section 408(d)(3);
4. That Code section 401(a)(9) minimum required distributions from Taxpayer C's sub-IRA referenced in (2) and (3) above may be computed with reference to Decedent A's remaining life expectancy and calculated using the age of Decedent A as of his birthday in the calendar year of his death (2006) reduced by one (1) for each subsequent calendar year in accordance with section 1.401(a)(9) of the "Final" Income Tax regulations (regulations"), Question and Answer-5; and
5. That the transfer, by means of a trustee-to-trustee transfer, of Taxpayer C's 1/3 interest in Decedent A's IRA X into a sub-IRA set up to benefit Taxpayer C will not constitute a distribution within the meaning of Code

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section 408(d)(1) to Taxpayer C and also will not constitute an excess contribution to said sub-IRA.

In a separate letter ruling, the Internal Revenue Service has ruled that the disclaimers referenced herein are qualified within the meaning of section 2518 of the Code.

**LAW:**

With respect to your second through sixth ruling requests, section 408(a)(6) of the Code provides that, under regulations prescribed by the Secretary, rules similar to the rules of section 401(a)(9) and the incidental death benefit requirements of section 401(a) shall apply to the distribution of the entire interest of an individual for whose benefit an IRA trust is maintained.

Section 401(a)(9)(A) of the Code provides, in general, that a trust will not be considered qualified unless the plan provides that the entire interest of each employee—

(i) will be distributed to such employee not later than the required beginning date, or

(ii) will be distributed, beginning not later than the required beginning date, over the life of such employee or over the lives of such employee and a designated beneficiary or over a period not extending beyond the life expectancy of such employee or the life expectancy of such employee and a designated beneficiary.

Section 401(a)(9)(C) of the Code provides, in relevant part, that for purposes of this paragraph, the term "required beginning date" means April 1 of the calendar year following the calendar year in which the IRA holder attains age 70 ½.

Section 401(a)(9)(B)(i) of the Code provides, in general, that if a plan participant (IRA holder) dies after the distribution of his interest has begun in accordance with subparagraph (A)(ii) (after his required beginning date), the remaining portion of his interest must be distributed at least as rapidly as under the method of distribution being used under subparagraph (A)(ii) as of the date of death.

Final regulations under section 401(a)(9) and 408(a)(6) of the Code were published in the Federal Register at 67 Federal Register 18987-19028 (April 17, 2002), and in the Internal Revenue Bulletin at 2002-19 I.R.B. 852 (May 13, 2002). The Preamble to the regulations, in relevant part, provides that the regulations apply for determining required minimum distributions for calendar years beginning after January 1, 2003. The Preamble also provides, in relevant, that a disclaimer must satisfy Code section 2518 in order to be treated as a valid disclaimer for purposes of section 401(a)(9).

Section 1.401(a)(9)-4 of the regulations, Q & A-4, provides, in pertinent part, that in order to be a designated beneficiary, an individual must be a beneficiary as of the date of the employee's or IRA holder's death. Generally, an employee's or IRA holder's designated beneficiary will be determined based on the beneficiaries designated as of the date of

death who remain beneficiaries as of September 30 of the calendar year following the calendar year of death. Accordingly, if a person disclaims entitlement pursuant to a disclaimer that satisfies section 2518 by that September 30 thereby allowing other beneficiaries to receive the benefit in lieu of that person, the disclaiming person is not taken into account in determining the employee's designated beneficiary.

Section 1.401(a)(9)-4, Q & A-3 of the regulations provides that only individuals may be designated beneficiaries for purposes of section 401(a)(9) of the Code. A person who is not an individual, such as an employee's estate, may not be a designated beneficiary. Further, section 1.401(a)(9)-4, Q & A-5(a) provides, in pertinent part, that a trust is not a designated beneficiary even if the trust is named as a beneficiary.

Section 1.401(a)(9)-5, Q & A-5(a) of the regulations provides, in summary, that if an employee dies on or after his required beginning date, the applicable distribution period for distribution calendar years after the distribution calendar year containing the employee's date of death is —(2) if the employee does not have a designated beneficiary as of the date determined under A-4 of section 1.401(a)(9)-4, the remaining life expectancy of the employee determined in accordance with paragraph (c)(3) of this A-5.

Section 1.401(a)(9)-5, Q & A-5(c)(3) of the regulations provides, in general, that with respect to an employee who dies and who does not have a designated beneficiary, the applicable distribution period is the life expectancy of the employee using the employee's age as of the employee's birthday in the calendar year of the employee's death. In subsequent years, the applicable distribution is reduced by one for each calendar year that has elapsed after the calendar year immediately following the calendar year of the employee's death.

Section 1.401(a)(9)-9, Q & A-1 of the regulations provides the relevant Single Life Expectancy Table.

Section 408(d)(1) of the Code provides, generally, that in accordance with the rules of section 72, amounts paid or distributed from an IRA are included in gross income by the payee or distributee.

Section 408(d)(3)(C) of the Code provides, in general, that amounts from an "inherited" IRA cannot be rolled over into another IRA. In general, an "inherited" IRA is an IRA maintained by an individual who acquired said IRA by reason of the death of another if the acquiring individual is not the surviving spouse of said other individual. In this case, as noted above, Taxpayer C is Decedent A's son.

Revenue Ruling 78-406, 1978-2 C.B. 157 provides that the direct transfer of funds from one IRA trustee to another IRA trustee, even if at the behest of the IRA holder, does not constitute a payment or distribution to a participant, payee, or distributee as those terms are used in Code section 408(d). Furthermore, such a transfer does not constitute a rollover distribution.

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Revenue Ruling 78-406 is applicable if the trustee-to-trustee transfer is directed by the beneficiary of an IRA after the death of the IRA owner as long as the transferee IRA is set up and maintained in the name of the deceased IRA owner for the benefit of the beneficiary. The beneficiary accomplishing such a post-death trustee-to-trustee transfer need not be the surviving spouse of a deceased IRA holder.

**ANALYSIS:**

With respect to your second, third, fourth and fifth ruling requests, pursuant to the above-referenced sections of the Code and regulations, Decedent A died without having designated a beneficiary of his IRA X. Additionally, as noted above, Decedent A died after having reached his "required beginning date." Thus, distributions from his IRA X must be calculated using his remaining life expectancy as determined in the calendar year of his death reduced in accordance with the regulations.

As noted above, Taxpayer C's 1/3 interest in Decedent A's IRA X will be transferred, by means of a trustee-to-trustee transfer, into a sub-IRA set up and maintained in the name of Decedent A (Deceased) for the benefit of Taxpayer C, beneficiary thereof.

Pursuant to Revenue Ruling 78-406, the proposed trustee-to-trustee transfer, will not constitute a distribution or payment as those terms are defined for purposes of section 408(d) of the Code. Thus, such a transfer may be accomplished by the beneficiary of an IRA of a deceased individual. Also, a trustee-to-trustee transfer from one IRA to another may be accomplished after the date of death of an IRA owner by a beneficiary of said IRA owner as long as the transferee IRA account remains in the name of the decedent for the benefit of the beneficiary.

Therefore, in this case, the proposed transfer may occur without giving rise to an immediate distribution to Taxpayer C. Furthermore, the transferee sub-IRA maintained in the name of Decedent A will be subject to the same minimum required distribution rules with respect to Taxpayer C as was Decedent A's IRA X prior to the transfer. Since the beneficiary of IRA X was Decedent A's estate, IRA X had no designated beneficiary as that term is used in Code section 401(a)(9). Thus, for purposes of determining required distributions from IRA X, Decedent A's remaining life expectancy must be used. The same life expectancy must then be used for purposes of determining required distributions from the sub-IRA to be set up to benefit Taxpayer C.

Thus, with respect to your second through fifth ruling request, we conclude as follows:

2. That Taxpayer C's 1/3 interest in Decedent A's IRA X may be segregated and held in a separate inherited sub-IRA set up and maintained in the name of Decedent A (Deceased) for the benefit of Taxpayer C for purposes of determining Taxpayer C's minimum required distributions under Code section 401(a)(9) which applies to IRAs pursuant to Code section 408(a)(6);



3. That Taxpayer C's inherited sub-IRA, created by means of a trustee-to-trustee transfer of Taxpayer C's portion of Decedent A's IRA X into said sub-IRA may be titled as reflected in the second (2<sup>nd</sup>) ruling request, and, as a result, will comply with the requirements of Code section 408(d)(3);
4. That Code section 401(a)(9) minimum required distributions from Taxpayer C's sub-IRA referenced in (2) and (3) above may be computed with reference to decedent A's remaining life expectancy and calculated using the age of Decedent A as of his birthday in the calendar year of his death (2006) reduced by one (1) for each subsequent calendar year in accordance with section 1.401(a)(9) of the "Final" Income Tax regulations (regulations), Question and Answer-5; and
5. That the transfer, by means of a trustee-to-trustee transfer, of Taxpayer C's 1/3 interest in Decedent A's IRA X into a sub-IRA set up to benefit Taxpayer C will not constitute a distribution within the meaning of Code section 408(d)(1) to Taxpayer C and also will not constitute an excess contribution to said sub-IRA.

No opinion is expressed as to the tax treatment of the transactions described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

This letter assumes that Decedent A's IRA X is and was qualified under section 408 of the Code at all times relevant thereto. It also assumes that the transferee IRA to be set up to hold Taxpayer C's 1/3 interest in Decedent A's IRA X will satisfy the requirements of Code section 408(a) at all times relevant thereto.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

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Pursuant to a power of attorney on file with this office, a copy of this ruling letter is being sent to your authorized representative. If you wish to inquire about this ruling, please contact \_\_\_\_\_, I.D. # \_\_\_\_\_, at \_\_\_\_\_ or \_\_\_\_\_ (FAX). Please address all correspondence to SE:T:EP:RA:T3.

Sincerely yours,

A handwritten signature in cursive script that reads "Frances V. Sloan". The signature is written in dark ink and is positioned above the printed name.

Frances V. Sloan, Manager  
Employee Plans Technical Group 3

Enclosures:  
Deleted copy of letter ruling  
Notice of Intention to Disclose